

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, HYDERABAD BENCH
AT HYDERABAD.

..
D.A.No.1042/97.

Date of decision: 22-1-1999

Between:

B. Azeez Khan. .. Applicant

and

1. The Superintendent of Post Offices,
Anantapur Division, Anantapur.
2. The Director of Postal Services,
Andhra Pradesh, Southern Region,
Kurnool.
3. Union of India represented by the
Director General, Department of
Posts, New Delhi. .. Respondents.

Counsel for the Applicant: Sri Krishna Devan.

Counsel for the Respondents: Sri B.Narasimha Sarma,
Senior Standing Counsel

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Hon'ble Sri R. Rangarajan, Member (A)

Hon'ble Sri B.S.Jai Parameshwar, Member (J)

JUDGMENT.

(by Hon'ble Sri B.S.Jai Parameshwar,
Member (J).
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Heard Sri Krishnadevan for the Applicant
and Sri B.Narasimha Sarma, the learned Senior
Standing counsel for the Respondents.

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2. The Applicant submits that he has been appointed as a contingent driver for Inspection Vehicle since 21.9.1990 under the control of the Superintendent of Post Offices, Anantapur Division, that even though he has completed more than 8 years service, he has been paid wages on daily wage basis, that he got his licence for driving heavy passenger vehicle with effect from 19.7.1994, that the same was intimated to the Respondents and he was appointed as a regular driver vide Memo No.83/JD/Dlgs. dated 29.7.1994 ~~issued~~ by the Superintendent of Post Offices, Anantapur Division, that he has been continuously working on the ^{same} basis without any break, that the Superintendent of Post Offices placed a requisition to the local Employment Exchange to sponsor the eligible candidates for selection in the month of July, 1997 and accordingly the District Employment Exchange, Anantapur by its Order No.97/60 dated 25.7.1997 sponsored 20 candidates eligible for selection and that the respondents are not considering his case for regularisation.

3. The applicant made a representation on 26-7-1997 seeking permission to acquire the requisite qualification. However, he was informed by letter dated 31.7.1997 that he cannot be considered for selection as he did not possess the necessary qualification.

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4. Hence, he has filed this O.A., for a declaration that he is entitled for absorption as Jeep Driver for the Inspection Vehicle of the Superintendent of Post Offices, Anantapur Division by holding that the steps taken by the Superintendent of Post Offices in filling up the vacancy through Interview scheduled to be held on 19.8.1997 including the impugned Order No. 83/JD/Dlgs dated 31.7.1997 passed by the respondents as illegal, arbitrary and to set aside the same.

5. On 13.8.1997 an interim order was passed directing the Respondent No.2 to allow the applicant to appear for the interview for the post of Driver to be held on 19.8.1997 and however directed that the results should not be declared until further orders. As per the interim order the applicant was not called for the interview, whereas the Respondents' counsel submits that he was interviewed along with the Employment Exchange sponsored candidates. It is not necessary to probe further into this aspect of the matter in view of the nature of direction that is going to be given in this O.A.

6. The Respondents have stated in their reply, that the applicant was formerly known as "Babu" and later he got changed his name as "Azeez Khan", that the applicant expressed his willingness to work as driver on contingent basis, that he worked as such from 19.7.1990 to 19.8.1990, that again he was taken to duty from 21.9.1990 and

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later continued to work till 20.3.1992, that when a vacancy arose then with a view to regularise his services, the applicant was asked to produce the proof regarding his Educational qualifications and a copy of the Driving Licence, that the applicant as per the letter dated 2.11.1996 produced a Xerox copy of the Educational Certificate and driving licence, that the said certificate contained the name as Azeez Khan, that the Superintendent of Post Offices verified the certificate and ascertained from the Head Master of the Institution, that the Head Master of the School had endorsed on the reverse of the copy of the certificate produced by the applicant that the said certificate was not issued by the said Institution, that the Applicant was not eligible for consideration for the post of Jeep Driver, that out of 20 candidates sponsored by the Employment Exchange only 9 candidates including the applicant attended the Interview, that the DPC., which was constituted for the purpose did not recommend the case of the applicant since the applicant had produced a false certificate.

7. The applicant has filed a rejoinder stating that inspite of his changed name, the Respondents' Authorities engaged him and paid him wages as per the changed name, that the respondents had not intimated him the minimum qualifications required for the post while placing the requisition to the Employment Exchange, that the contention of the Respondents regarding the

32

convening of DPC on 25.4.1997 is not correct, that the applicant has not given an opportunity stating that the copy of the school certificate produced by him is a genuine one. Thus he seeks a direction to the respondents to consider his candidature for the post of jeep driver.

8. The Respondent Authorities when asked the Applicant to produce certain documents and the copy of the Driver Licence for regularisation of his services, the applicant had submitted a copy of School certificate and the Driving Licence. It is the case of the respondents that on verification they found the Educational Certificate to be a false one. Before deciding that aspect, the Respondent Authorities had not given any opportunity to the applicant to explain about the endorsement made by the Head Master of the Institution on the reverse of the copy of the Transfer Certificate produced by the Applicant. But they replied the applicant by the impugned letter dated 31.7.1997 (Page 18 to the O.A.) rejecting his application on the ground that he did not possess the required Educational qualifications.

9. When an employee who is working for a long time is not considered on the ground that his Educational Certificate is not a genuine one, the principles of natural justice requires that he shall be heard before rejecting his case. In this case, the applicant's regularisation

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was rejected solely on the ground that he did not possess the Educational qualification on the ground that the Certificate produced by him was not a genuine one on the basis of the endorsement made by the Head Master on the reverse of the Transfer Certificate. In such circumstances, the applicant should have been informed of the remarks of the Head Master and his explanation was called for. Based on the explanation given by him, the case should have been decided one way or the other. That procedure was not followed. Hence the case of the applicant was rejected without giving him an opportunity to prove the genuineness or otherwise of the certificate, which in our opinion is not in order.

10 In that view, we feel that now an opportunity should be given to the applicant stating the reasons for rejecting his case and to call for his explanation. On the basis of the explanation to be given by the applicant, it should be decided by the DPC, whether his case is to be rejected or to regularise his services on the basis of the recommendation of the DPC. The applicant apprehends that his case will not be decided and the vacancy available will be filled up by the Employment Exchange sponsored candidate and thereby he loses his chances for appointment and regularisation.

11. In order to protect the interests of the applicant, the interests of justice requires not to

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available ⁷ on the date of receipt of this order.
 fill up that vacancy, till a final decision is taken
 by the respondents in pursuance of the directions
 given above.

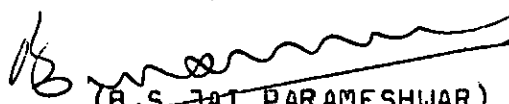
12. After a final decision is conveyed
 to the applicant the post may be filled up according
 to law after the expiry of two weeks' time from the
 date of communication of the decision of the Res-
 pondents to the applicant, if the applicant is not
 found eligible for regularisation by the respondents.

13. In case the applicant is allowed to be
 considered along with the Employment Exchange sponsored
 candidates, his case should be placed before the DPC.,
 and on the basis of the recommendation of the DPC., only,
 the post should be filled up.

14. In case, if there is no vacancy
 available on the date of receipt of a copy of this
 Order, the case of the applicant should be decided
 according to his eligibility as per extant rules
 in the next vacancy that arises.

15. Till a final decision is taken, the
 applicant shall be continued in the post hitherto he
 is working.

16. With the above directions, the O.A., is
 ordered. No costs.


 (B.S. JAI PARAMESHWAR)
 22.1.99 Member (J)


 (R. RANGARAJAN)
 Member (A)

NOTE

C.C. by Monday (25.1.1999)
 (B.O.)

Date: 22nd January, 1999
 Dictated in open Court.

